Supreme Court, U.S.
FILED

05-340 JUN 15 2005

No. _____

In The
Supreme Court of the United States

BOBBY LEN FRANKLIN, Desert Land Entry N-49548®
ROBERT LEE FRANKLIN, 20-Acre Assignment of Entry®
DONNA SUE OWENS, 20-Acre Assignment of Entry®

Plaintiffs-Appellants-*Petitioners*,

v.

UNITED STATES, Department of the Interior
Board of Land Appeals;
District Manager, Las Vegas District, Nevada,
Bureau of Land Management,

Defendants-Appellees-*Respondents*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Bobby Len Franklin
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QUESTION PRESENTED

Under the *desert land laws* of the United States, the Petitioners strongly believe they have a statutory *right* to confirm and patent their consolidated Desert Land Entries (DLE) and Assignments. The lower courts in the Ninth Circuit have dismissed its mandamus judicial jurisdiction, contrary to the landmark Federal holding of this Court. The question presented is:

Did the United States Court of Appeals for the Ninth Circuit and its District Court of Nevada unjustly fail and disregard its circuit duty to consider the "receiver's receipt" instrument and to judicially try the Appellants' administratively exhausted statutory land *patent right* provided in 43 USCA § 1165, as expressed in the Bureau of Land Management patent regulation 43 CFR § 1862.6, as required under the Administrative Procedure Act (APA) 5 USC §§ 701-706, as mandated by the stare decisis doctrine of this Court in its landmark decision *Stockley, et al., v. United States*, 260 U.S. 532 (1923), and is such rebellious failure of judicial duty an arbitrary blockade against any or all desert farming on federal public lands, in strict violation to the due process of law in the 5th Amendment of the United States Constitution, that guarantees the Appellants and any other valid Desert Land Entryman a judicial *trial* on their administratively exhausted desert land patent right?

And did such lower courts disregard the Appellants' right to contract 43 USCA § 324 - *Assignment of entries*, by entertaining the clear fraud on the court, misrepresented by the Defendants and their counsel, who falsely stated that the Bureau of Land Management's "Mineral in Character" contest was not fully argued and *finally* "reversed" in *Franklin*, 116 IBLA 29, 31 (1990)?

PARTIES TO THE PROCEEDINGS

The Petitioners, Plaintiffs-Appellants below, are:

1) ***Bobby Len Franklin***, Desert Land Entryman N-49548, which was consolidated by final order *IBLA 96-111, 96-163*, with his father Bobby Dean Franklin, Desert Land Entryman N-52292. The legal description of their consolidated entries is the *S.E. 1/4 of Section 16, T. 32 S., R. 66 E., Mount Diablo Meridian*, consisting of (a square) *160-acres*. Bobby Dean Franklin is not a party to the proceedings, due to his age and health problems. He is now 75-years old.
2) ***Robert Lee Franklin*** *individually* purchased a 20-acre Assignment in such consolidated entries, from his father Bobby Len Franklin, pursuant to 43 USC § 324, on October 11, 2002. Such Assignment is recorded in the lower courts and the Clark County Recorder's Office, with all State transfer taxes paid.
3) ***Donna Sue Owens***, *individually* purchased a 20-acre Assignment in such consolidated entries, from her brother Bobby Len Franklin, pursuant to 43 USC § 324, on August 23, 2002. Such Assignment is recorded in the lower courts and the Clark County Recorder's Office, with all State transfer taxes paid.

The Respondents, Defendants-Appellees below, are:

1) ***UNITED STATES***, *Department of the Interior Board of Land Appeals* (IBLA), the final decision maker for such administrative (Interior) agency; and,
2) *Mark Morse, District Manager, Las Vegas District, Nevada, Bureau of Land Management* (BLM), who has the ministerial duty to issue public land patents in such District, 43 CFR § 1862.6.

I. LOWER COURT DISMISSAL - JURISDICTION

All administrative remedies have been exhausted on Appellants' statutory land patent rights, under 43 CFR § 1862.6, 43 USC § 1165, *Stockley, et al., v U.S.*, 260 U.S. 532 (1923), for judicial review. The District Court *dismissed* its original mandamus jurisdiction 28 USC § 1361, on 6/9/04. On 4/4/05, the Ninth Circuit Court of Appeals *affirmed* such summary dismissal in an unpublished Memorandum. As invoked under 28 USC § 1254(1), this Court has jurisdiction to compel such lower courts to abide by its landmark holding of *Stockley*. Please see, *Appendix*, Table of Contents.

II. THE ADMINISTRATIVE REMEDIES EXHAUSTED

The administrative (Interior) record clearly shows that Appellant-Bobby Len Franklin (Bobby) purchased his Desert Land Entry (DLE) N-49548, from the Appellee-Bureau of Land Management (BLM), under the desert land laws of the United States, 43 USCA 321 et seq. - *Entry right generally*. The relevant facts in chronological record are:

1. On 8/26/88, the BLM issued Bobby a "*receiver's receipt*", showing Bobby had paid all required filing fees and the money required for the desert land.
2. On 8/27/90, pursuant to 43 USC § 322 – *Deserts lands defined*, the Interior Board of Land Appeals (IBLA) "reversed" the BLM "mineral in character" contest it filed against Bobby's DLE, and "remanded" BLM for action *consistent* with such opinion, in *Franklin*, 116 IBLA 29, 31 (1990). [1]

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[1] The lower courts have entertained the fraud on the court perjured by Assistant U.S. Attorney BLAINE WELSH, Nevada Bar #4790, and the Appellees, who have falsely testified for the last 15-years that the BLM's "mineral in character" contest was not fully argued and finally "reversed" in *Franklin*, 116 IBLA 29, 31 (1990).

3. On 10/27/95, the BLM issued a *decision* stating that Bobby was never issued a "receiver's receipt". The BLM contended "In order for any right to title to the land to vest in the applicant, the BLM must issue an entry allowed decision" (register's certificate). Bobby timely appealed again to IBLA, this time demanding patent to his suspended entry, under such statutory patent law, on appeal.
4. On 12/19/96, the IBLA finally ordered that "Desert Land Entries N-49548, N-52292" be "consolidated" (inter alia), and then "dismissed" the Franklin statutory patent rights cited, in *IBLA 96-111, 96-163*.
5. On 8/23/02 and 10/11/02, pursuant to 43 USCA § 324 – *Assignment of entries*, Bobby contracted assignments of his DLE with Appellants Donna Owens and Robert Franklin respectively. The BLM *adversely* refused to clear-list such assignments with the Clark County Assessor and title insurance company, by *wrongfully* telling them that Bobby's DLE was "mineral in character", while knowing IBLA had finally "reversed" that issue in 1990.

All Interior remedies were unequivocally exhausted for *judicial* patent relief.

III. THE JUDICIAL REMEDIES EXHAUSTED

The judicial record clearly shows that Bobby has exhausted all administrative remedies to clear-list and patent his consolidated DLE, but he never has had a *judicial* trial to enforce his statutory land patent rights. The facts are:

1. On 2/2/04, the named Appellants filed a complaint for such statutory patent relief in the District Court of Nevada, seeking judicial review of such *adverse* Interior actions committed, and the *patent* remedies exhausted, as required under the APA law.

2. On 6/8/04, the district court dismissed such complaint for statutory patent relief, for *"lack of jurisdiction over the subject matter."* and for *"failure to state a claim upon which relief can be granted."* (Rule 12).
3. On 6/22/04, the Plaintiffs filed Motion for Relief from Judgment or Order, Rule 60(b), because the Order repeatedly misrepresented the Interior record on file, and completely failed to address the Plaintiffs' statutory *patent* rights on file that were administratively exhausted.
4. On 7/30/04, the district court denied Rule 60 (b) relief.
5. On 4/4/05, after the parties filed briefs, the Ninth Circuit Court of Appeals *affirmed* the district court summary dismissal(s), in an unpublished Memorandum not appropriate for publication.

IV. ARGUMENT

The district court (irrelevant *dicta*) falsely implied the BLM *mineral in character* contest was not fully argued and "reversed" by IBLA on 8/27/90, and falsely implied Bobby had lost his statutory patent rights somewhere in a judicial court. Truth is, Bobby has never had a *judicial* trial on his administratively exhausted statutory *patent* right, and the district court failed to do its duty of addressing such exhausted statutory patent right, contrary to law. Nowhere in its summary dismissal(s) ever addressed the "receiver's receipt" issued to Bobby on 8/26/88, which is the only "instrument" for judicial consideration in this Case. A copy of the disregarded "receiver's receipt"; 43 CFR § 1862.6; 43 USC § 1165; 5 USC § 706; and, Stockley, et al., v. United States, 260 U.S. 532 (1923) are indexed in the Appendix of this petition, for consideration.

The unpublished Ninth Circuit Memorandum (dicta) reviewed nothing de novo because it also omitted the Appellants statutory land *patent* rights on appeal, disregarded the "receiver's receipt" on record, and mistakenly states the appeal is from district court dismissing their appeal from the Interior's *"denial of their application for Desert Land Entry under 42 U.S.C. 321 et seq."* Fact is, the Appellants *are* on appeal from their administratively exhausted statutory *patent* right, under contract, which both lower courts refused to address and recklessly disregarded. A copy of the district court summary dismissal order(s) and the unpublished Ninth Circuit Memorandum on appeal, are chronologically indexed in the Appendix.

The Appellants pray this Court considers Bobby's "receiver's receipt" issued to him and judicially recognizes his statutory patent rights under the stare decises doctrine, and consider that all Appellants depended upon the statutory title right asserted by *Stockley*, exactly like all Appellants depend upon the statutory title right asserted by Bobby. [2]

As it is written in the landmark United States Supreme Court holding in *Stockley*, the decision of the Circuit Court of Appeals should be reversed, and the cause remanded to the District Court with directions to confirm the Appellants' patent right to their titles.

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[2] The Franklins have invested the last 17-years of their life and liberty into developing their DLE property. In 2002, the noted statutory assignments were recorded, but BLM adversely clouded such assignments. On 5/4/05, Appellants filed a "Notice of Abeyance" in the recorder's office, awaiting a judicial trial on their statutory land patent rights, as the due process of law guarantees. On 6/15/05, a "BLM Land Auction" has been set to transfer the Appellants' desert land to another. On 5/10/05, Dan O'Brien, Unit Chief of the FBI Fraud Unit, Washington, D.C., has assigned the Las Vegas Field Division of FBI to investigate this and other related matters of fraud and corruption in (Laughlin) Clark County, Nevada.

V. CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Pursuant to 28 USC §1746, we state under penalty of perjury that the foregoing is true and correct. Executed on this 28th day of July, 2005.

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